IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY EIGHTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

And
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 9677 of 2005

Between:

1 A.Rangaiah, S/o. Mallaiah, Retired Head Warder,
District Jail, Secunderabad, R/o. 2-4-110/H/1, Nalandanagar, Sangareddy,
Medak District.
2 A.Mallesham, S/o. A.Rangaiah, Unemployee,
R/o. Brahminwadi, Sangareddy, Medak District.

..... PETITIONERS

AND

1 The Government of Andhra Pradesh, represented by its Secretary, Department of Home & Prisons, Secretariat Buildings, Hyderabad.
2 The Deputy Inspector of Prisons, Hyderabad.
3 The Superintendent, Central Prisons, Secunderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction, especially one in the nature of Writ of Certiorari: 1). Calling for the records to O.A.No.7458 of 1999 on the file of A.P Administrative Tribunal dt.7-1-05 and set aside the same duly allowing O.A.No.7458 of 1999. and (2) Consequently direct the respondents to appoint petitioner No.2 in any suitable post duly treating the period of date of retirement of the petitioner No.1 as 12-2-1999.

Counsel for the Petitioners: MR.K.VASUDEVA REDDY

Counsel for the Respondents: GP FOR SERVICES-I

The Court at the admission stage made the following:

ORAL ORDER: (per GB.J.)

The Writ Petition is filed assailing the order passed by A.P. Administrative Tribunal (for brevity Tribunal) in O.A.No.7458 of 1999, dated 7.1.2005.

2. The matter relates to compassionate appointment consequent on the medical invalidation of the father of the 2nd petitioner. The second petitioner is the son of the first petitioner. First petitioner was working as Head Warder and he was retired on medical invalidation with effect from 12.2.1999. Thereafter the second petitioner made an application for appointment under compassionate appointment scheme. When the authorities did not consider the same, he filed the above OA seeking appropriate directions. The learned Tribunal, after considering the matter, dismissed the above OA by observing as follows:

> "As can be seen from the file, through a reference dated 20.6.1999, the D.I.G. (Prisons), Telangana Region, has asked the Superintendent concerned to obtain the consent of the 2nd applicant for being considered against the vacancies of Sweeper, available at Borstal School, Nizamabad. In response to a Memo, a consequential Memo was issued by the Superintendent, Central Prison, Secunderabad, dated 3.8.1999. The 1st applicant informed the Superintendent, Central Prison, Secunderabad, that the 2nd applicant was not willing to do the Scavenger post at District Jail, Nizamabad and that he failed to convince him in this regard. In his letter dated 12.8.1999, the 1st applicant further requested the Superintendent, Central Prison, Secunderabad to consider appointment of the 2nd applicant as a Mali and post him at District Jail, Sangareddy. Therefore, it is quite clear that upon the retirement on medical invalidation of the 1st applicant, an offer has, in fact, been made irrespective of whether the actual appointment could have been made had it been accepted by the 2nd applicant and the 1st applicant has categorically stated that his son was not willing to accept the offer of appointment.
>
> In the first place, the claim is for a compassionate appointment which has no statutory backing even then the offer, initially made, was not accepted by the 2nd applicant. Hence, the 2nd applicant can have no legitimate claim for appointment on compassionate grounds".

The said order came to be challenged in this Writ Petition.

3. The learned counsel for the petitioners submits that the petitioner never refused the appointment and on the other hand he only requested the authorities to accommodate him in the post of Mali, if it is permissible, but the Tribunal misconstruing the position held that he refused the appointment and therefore he is not entitled for appointment.

4. On the other hand the learned Government Pleader for Services-I submits that when the petitioner did not accept the offer, question of considering his case would not arise.

5. After hearing the learned counsel for the parties, we do not find any material to show that the petitioner has refused to accept the appointment, but he requested the authorities to consider his case for the post of Mali instead of Scavenger. Therefore we are of the considered view that the matter requires reconsideration in the hands of the respondents. We also find that there is no other ground on which the case of the petitioner was rejected. Though this Court could have granted the relief, we leave it open to the Government to consider dispassionately.

6. Under those circumstances, the order of the Tribunal is set aside and the matter is remitted back to the 2nd respondent herein and he is directed to consider the case of the petitioner for appointment under compassionate appointment scheme. This exercise shall be done within a period of two (02) months from the date of receipt of a copy of this order.

7. With the directions indicated above, the Writ Petition is disposed of. No costs.

(G.BIKSHAPATHY, J.)

28th April, 2005.

SSR (P.S.NARAYANA, J.)

..... REGISTRAR

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SECTION OFFICER

To

1 The Secretary, Department of Home & Prisons, Government of Andhra Pradesh, Secretariat Buildings, Hyderabad.
2 The Deputy Inspector of Prisons, Hyderabad.
3 The Superintendent, Central Prisons, Secunderabad.

4 The Registrar, A.P. Administrative Tribunal, Hyderabad.

5 2 CCs to G.P. for Services-I, High Court of A.P. Hyderabad. (OUT)

6 2 CD copies

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